RECENT DECISIONS

BROKERS—EXCLUSIVE AGENCY.—The defendant employed the plaintiff to sell real estate giving him a definite time in which to procure a purchaser, and informed him that the land was listed with no other agent. Before the expiration of the time fixed the defendant sold the land through another broker. Subsequently the plaintiff produced a purchaser within the prescribed time, and brought an action for commission. *Held*, the plaintiff can recover. *Paulsen* v. *Rourke* (Col.), 145 Pac. 711.

Where property is placed in the hands of a broker for sale, the general rule is that the owner may nevertheless sell the property himself, even if he has not reserved the right to do so, without incurring liability to the broker. *Stewart* v. *Murray*, 92 Ind. 543, 47 Am. Rep. 167. Where an exclusive agency is expressly given the owner cannot sell the property through another broker. *Moses* v. *Bierling*, 31 N. Y. 462. Though in such case the owner himself may sell without becoming liable to the broker. *Dale* v. *Sherwood*, 41 Minn. 535, 43 N. W. 569, 5 L. R. A. 720. When it is stipulated that the broker shall have a definite time within which to make a sale, some courts imply from such a stipulation a prohibition on the principal to terminate the employment within the time, by sale or otherwise. *Blumenthal* v. *Bridges*, 91 Ark. 212, 120 S. W. 974, 24 L. R. A. (N. S.) 279. But the contrary has been held. *Hammond* v. *Mau*, 69 Wash. 204, 124 Pac. 377, 40 L. R. A. (N. S.) 1142.

CARRIERS—CONSTITUTIONAL LAW—OBLIGATION OF A CONTRACT.—A railroad company, which was empowered by the State statute to regulate rates for the transportation of freight, entered into a contract with a business concern purporting to fix the rates for the transportation of freight for so long as the concern did business. Held, such a contract could be annulled by action of the Railroad Commission under statutory authority fixing rates other than those named in the contract, without impairing the obligation of the contract. *Minneapolis, St. P. & S. S. M. Ry. Co.* v. *Menasha Wooden Ware Co.* (Wis.), 150 N. W. 411.

It is universally conceded that a State has the sovereign right to regulate intrastate railroad rates in the absence of a provision as to rates in the charter of the company constituting a contract. *Peik* v. *Chicago, etc., Ry. Co.*, 94 U. S. 164, 24 L. Ed. 97; *Georgia R. R. & Banking Co.* v. *Smith*, 128 U. S. 174, 32 L. Ed. 37; *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, 325, 331. And in order to exempt a railroad corporation from legislative interference with its rates it must appear that the exemption was made in the charter by clear and unmistakable language, inconsistent with any reservation on the part of the State. *Georgia R. R. & Banking Co.* v. *Smith*, *supra*. Furthermore this power of the State to regulate the rates of a railroad is not lost by non-user and the fact that it allowed the railroad itself to regulate the rates for

a long period of time. *Chicago, B. & O. R. R. Co.* v. *Iowa*, 94 U. S. 155, 24 L. Ed. 94.

Although there is a dearth of authority on the exact point decided in the principal case, it can be easily seen from the adjudicated cases bearing on the question that the contract in the principal case was made subject to the right of the State to assume again its power to regulate intrastate rates. For it is clear that no legislative act is irrepealable unless it assumes the form and substance of a contract. *Bloomer* v. *Stolley*, 5 McLean 158, Fed. Cas. No. 1,559; *State* v. *Pond*, 93 Mo. 606, 6 S. W. 469. And it has been uniformly held by the Supreme Court of the United States that contracts between private parties and common carriers fixing compensation to be paid for transportation, though made under State or Federal authority, are made subject to the right of the State or of congress to modify or annul them under their sovereign power to regulate rates. *Louisville & Nashville R. R. Co.* v. *Motley*, 219 U. S. 467, 31 Sup. Ct. 265, 55 L. Ed. 297, 34 L. R. A. (N. S.) 671; *Portland R. R. Co.* v. *Oregon Railroad Commission*, 229 U. S. 397, 33 Sup. Ct. 820, 57 L. Ed. 1249. And it has been held that a contract, such as the one in the principal case, was rendered unenforceable without impairing its obligation, by the State passing subsequent laws regulating rates. *Seaman* v. *M. & P. R. R. Co.* (Minn.), 149 N. W. 134. This principle is further supported by the fact that contracts made with municipal service corporations by individuals regarding rates, are made subject to whatever power the city has to modify or change the rates to be charged. *Portland, Ry. & Light Co.* v. *City of Portland*, 200 Fed. 890; *City of Knoxville* v. *Knoxville Water Co.*, 189 U. S. 434, 23 Sup. Ct. 531, 47 L. Ed. 887.

CARRIERS—SEIZURE UNDER LEGAL PROCESS—LIABILITY OF CARRIER.—A consignment of fruit was shipped over the defendant's line. In an action of replevin by a creditor of the consignee, in which a bond was required for the consignee's protection, the fruit was seized and sold. The defendant gave no notice of such seizure until after the sale; and, before the consignee took any steps to set up his claim in the action, the defendant bound itself to surrender all rights in the fruit to the plaintiff and released the bond given as security. *Held*, defendant was liable to the consignee for the value of the shipment. *Martorana* v. *Baltimore & Ohio R. R. Co.*, 151 N. Y. Supp. 840.

A well-recognized exception exists exempting carriers from liability as an insurer where goods were seized under legal process. *Stiles* v. *Davis*, 1 Black (U. S.) 101. But the carrier can only justify itself in such cases by showing that the seizure was under process apparently valid. *Merriman* v. *Great Northern Ex. Co.*, 63 Minn. 543, 65 N. W. 1080. And notice of the seizure must be given by the carrier to the consignee in order to terminate its liability. *Spiegel* v. *Pacific Mail S. S. Co.*, 26 Misc. 414, 56 N. Y. Supp. 171. Delay in giving such notice also fixes the liability of the carrier, for the consignee should be given every advantage in defending his rights in the property; especially where the delay is negligent or collusive. *Robinson* v. *Memphis & C. R. R. Co.* (C. C.), 16 Fed. 57. In the principal case the carrier was guilty of a breach of its duty in failing to notify the consignee of the seizure. This, in itself,